

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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ALPHONSO L. WELCH,

Plaintiff,

v.

DECISION AND  
ORDER  
13-CV129-A

SWEETWORKS/NIAGARA CHOCOLATES,

Defendant.

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The above-referenced case was referred to Magistrate Judge Leslie G. Foschio, pursuant to 28 U.S.C. § 636(b)(1)(B). On August 21, 2014, Magistrate Judge Foschio filed a Report and Recommendation, recommending that Defendant's motion to dismiss for failure to state a claim (Dkt. No. 5) be granted, and the Complaint be dismissed without prejudice and with leave to file an amended complaint within 30 days of the District Judge's decision on the Report and Recommendation (Dkt. No. 15.)

The Court has carefully reviewed the Report and Recommendation, the record in this case, and the pleadings and materials submitted by the parties, and no objections having been timely filed, it is hereby

ORDERED, that pursuant to 28 U.S.C. § 636(b)(1), and for the reasons set forth in Magistrate Judge Foschio's Report and Recommendation, Defendant's motion to dismiss (Dkt. No. 5) is granted, and the Complaint is dismissed without prejudice and with leave to file an amended complaint within 30 days of this decision. Plaintiff shall file an amended complaint on or before October 7, 2014.

The Clerk of Court shall take all steps necessary to close the case.

IT IS SO ORDERED.

\_\_\_\_\_*Richard J. Arcara*\_\_\_\_\_  
HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT COURT

Dated: September 9, 2014